STATE OF MICHIGAN

IN THE SUPREME COURT

BRONSON METHODIST HOSPITAL,

Plaintiff/Appellee,

v.

MICHIGAN ASSIGNED CLAIMS FACILITY,

Defendant/Appellant.

Supreme Court Case No. 151343

COA Docket Nos. 317864 & 317866
(Consolidated)

Lower Court Case No. 12-0600-NF
Kalamazoo County Circuit Court
Hon. Gary C. Giguere, Jr.

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BRONSON METHODIST HOSPITAL'S BRIEF IN OPPOSITION TO MICHIGAN ASSIGNED CLAIMS PLAN'S APPLICATION FOR LEAVE TO APPEAL OR, IN THE ALTERNATIVE, FOR PEREMPTORY REVERSAL

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Court of Appeals' Answer: Yes.

Bronson's Answer: Yes.

MACP's Answer: No.

II. DID THE CIRCUIT COURT CLEARLY ERR IN FINDING THAT BRONSON'S CLAIM WAS FRIVOLOUS WHERE THE PLAIN LANGUAGE OF THE ASSIGNED CLAIMS STATUTUES AUTHORIZED BRONSON TO SUBMIT ITS CLAIM AND REQUIRED THE ASSIGNED CLAIMS PLAN TO ASSIGN IT, AND THERE IS NO PUBLISHED AUTHORITY THAT CONTRADICTS BRONSON'S POSITION?

Court of Appeals' Answer: Yes.

Bronson's Answer: Yes.

MACP's Answer: No.

INTRODUCTION

Bronson Methodist Hospital ("Bronson") provided medically necessary care and treatment to Cody Esquivel following a motor vehicle accident. Because it was unable to identify any applicable insurance or to contact Esquivel following his discharge, Bronson submitted a claim for benefits to the Michigan Assigned Claims Plan ("MACP").[1] The MACP is a legislatively created entity that is statutorily required to assign claims for no fault benefits in Michigan where no insurance is available or none can be identified. Rather than assign Bronson's claim to a responsible no fault insurer for processing, however, the MACP refused, taking the position that Bronson's claim was ineligible for assignment. Bronson filed this lawsuit to force the assignment of its claim.

In response, before filing an answer or engaging in any discovery, the MACP moved for summary disposition, arguing that because Esquivel was operating his own vehicle at the time of the accident, he was either (1) uninsured, in which case he would be excluded from receiving no-fault benefits as an uninsured owner under MCL 500.3113(b), or (2) insured, in which case his own insurance carrier, not an MACP-assigned carrier, would be responsible for paying the bill. Bronson opposed the MACP's motion, arguing that under the plain language of MCL 500.3172(1) and the Court of Appeals' decisions in *Spencer v Citizens Insurance Company* and *Spectrum Health v Grahl*, no insurance could be "identified" by Bronson and the claim was required to be assigned.

[1] The application was submitted to the then-extant Michigan Assigned Claims Facility ("MACF"). The MACF is the predecessor to the MACP. In 2012, the no fault act was amended and the responsibility for administration of assigned claims was transferred from the State of Michigan to the Michigan Automobile Insurance Placement Facility ("MAIPF"), a legislatively created entity governed by various automobile no fault insurers licensed in Michigan. 2012 PA 204. The MACF was dissolved and the MACP was created to succeed it. Because the MACP has appeared and defended this litigation, all references in this brief are to the MACP, even though the claim was technically submitted to the MACF.

The circuit court erroneously granted the MACP summary disposition. Despite the plain and clear distinction in MCL 500.3172(1) between circumstances where no insurance "is applicable" and those where no insurance can "be identified," the court held that Bronson could not seek benefits from the MACP, and had to pursue Esquivel's carrier, even though it was undisputed that Bronson had been unable to "identify" that insurance carrier. This holding directly contradicted the no fault act's plain language. The circuit court thus erred.

But it then compounded the error. At the MACP's request, the circuit court found Bronson's claims frivolous – devoid of legal merit – and ordered Bronson to pay the MACP's attorneys' fees under MCL 600.2591. This was clear error. Bronson's position was not only not contradicted by "clear and unequivocal" published authority (the standard for finding a claim frivolous, as discussed by this Court), its position is supported by the plain language of the no fault act. The circuit court thus doubly erred.

Bronson accordingly filed a claim of appeal with the Court of Appeals. In a February 19, 2015 unpublished opinion, the Court of Appeals correctly reversed the circuit court's orders granting summary disposition to the MACP and awarding the MACP its attorneys' fees and costs under MCL 600.2591. In doing so, the court concluded that the circuit court's decisions were premature and the MACP had failed to sustain its burden to justify summary disposition:

> We hold that the circuit court jumped the gun, as the evidence presented with the MACP's summary disposition motion did not factually support that immediate dismissal is warranted. Accordingly, we vacate the circuit court orders dismissing Bronson's claims and imposing sanctions against it, and remand for further proceedings.[2]

The MACP now seeks leave to appeal this decision in this Court.

[2] *Bronson Methodist Hospital v. Michigan Assigned Claims Facility*, unpublished opinion per curiam of the Court of Appeals, issued February 19, 2015 (Docket Nos. 317864; 317866) ("Op."), p. 1.

GROUNDS FOR APPEAL

This Court should deny this application for leave to appeal because the grounds presented by the MACP pursuant to MCR 7.302(B)(3) and MCR 7.302(B)(5) lack merit. The MACP's application fails to show (1) that the Court of Appeals' holding that the MACP had failed to sustain its burden to justify summary disposition "involves legal principles of major significance to the state's jurisprudence," under MCR 7.302(B)(3), or (2) that the Court of Appeals' "decision is clearly erroneous and will cause material injustice or the decision conflicts with a Supreme Court decision or another decision of the Court of Appeals," under MCR 7.302(B)(5).

The issue on appeal is narrow – whether the Court of Appeals correctly remanded this case for further proceedings after concluding that the "MACP's summary disposition motion did not factually support that immediate dismissal is warranted."[3] The Court of Appeals properly held that "[t]he circuit court erred in granting the MACP's motion for summary disposition before the parties conducted any discovery."[4] The Court of Appeals' decision is well reasoned and substantiated by the record and Michigan caselaw. The issue of whether the court prematurely dismissed Bronson's claim on summary disposition, and without conducting any discovery, is a matter of routine review and does not involve legal principles of major significance to Michigan's jurisprudence.

Although the MACP claims that the Court of Appeals' decision "presents an issue of great significance to the MACP,"[5] the fact is that the Court of Appeals' decision simply follows well-established caselaw that precludes granting summary disposition where "a central material

[3] *Id.* at 1.

[4] *Id.* at 7.

[5] MACP Application for Leave to Appeal ("App.") p. vii.

fact question" remains.[6] The MACP states that the decision "eliminates the MACP's statutory right to make an initial determination that a claim is obviously ineligible."[7] That is pure hyperbole. In fact, the Court of Appeals simply held, under the facts as presented by the MACP, that

> nothing in the record establishes that Esquivel was actually uninsured. And no applicable insurance has been identified, despite Bronson's efforts. Thus, at this juncture, Bronson's claims fall squarely within that portion of MCL 500.3172(1) addressing claims for which "no personal protection insurance applicable to the injury can be identified." The existence of a central material fact question—whether or not Esquivel had insurance at the time of the accident—precluded summary disposition, and the circuit court erred in granting the MACP's motion and request for sanctions.[8]

Because the MACP fails to raise any valid grounds under MCR 7.302, the question presented by the MACP should not be reviewed by this Court.

FACTS

A. Cody Esquivel is injured in a motor vehicle accident and treats at Bronson.

On July 6, 2012, Cody Esquivel was injured in a motor vehicle accident.[9] According to the Michigan Department of State Police Original Incident Report,[10] Esquivel was intoxicated at the time and driving a 2002 Jeep that was registered in his name. It appeared that the Jeep had peeled out of a driveway, rolled over twice and hit a large boulder at the end of a private driveway near 58th Street in Fennville, Michigan.[11]

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[6] Op. at 8.

[7] App. p. viii.

[8] Op. at 8.

[9] Complaint, ¶ 6.

[10] Report attached at Tab 1 to Bronson's 4/26/13 Brief Opposing Motion for Summary Disposition ("4/26/13 Br").

[11] *Id.*

Immediately following the accident, Esquivel was transported via Air Care to Bronson's emergency room, where he arrived already intubated and in a c-collar.[12] Esquivel was admitted as a Level 1 Trauma.[13] Bronson provided care and treatment to Esquivel for injuries he sustained in the accident, which treatment included CT scans of his head and body, several x-rays, lab work, and treatment for a transverse fracture through the 5th metacarpal.[14] Bronson's charges for the care and treatment it provided to Esquivel totaled $21,914.22.[15]

B. Bronson investigates for applicable automobile no fault insurance and is unable to identify any.

Given the circumstances of his arrival at the hospital, Bronson did not receive any information from Esquivel as to whether he had no-fault insurance and with whom. The MACP claims that Bronson "made statements to the Court of Appeals with respect to Mr. Esquivel's level of consciousness and their inability to communicate with him …."[16] In fact, the MACP erroneously argued before the Court of Appeals that Bronson attempted to "mislead the Court with respect to Esquivel's level of consciousness, and their [sic] ability to communicate with him …."[17] The MACP then claims – as it did before the Court of Appeals – that Bronson should have obtained insurance information from Esquivel, given this.[18] The first time the MACP raised this argument was before the Court of Appeals[19] and therefore it is not preserved for appeal.[20] That said, the police report from the accident shows that the investigating officer was

[12] See Medical Records, attached at Tab 2 to 4/26/13 Br.

[13] *Id.*

[14] *Id.*

[15] See UB-04 Billing Form and Itemized Statement, attached at Tab 3 to 4/26/13 Br.

[16] App. p. 4.

[17] MACP COA Brief on Appeal p. 2.

[18] *Id.*, pp. 2-3; App. p. 5.

[19] See 4/1/13 MACP Br. pp. 3-6.

[20] *Neal v Dep't of Corr*, 297 Mich App 518, 532; 824 NW2d 285 (2012).

"unable to interview" Esquivel because he was "unconscious" at the time of the accident.[21] The accident in which Esquivel was injured was severe, and paramedics observed that his windshield was "spider-webbed," suggesting head trauma.[22] Esquivel was air lifted to Bronson. Bronson's records show that he "arrived intubated and in c-collar and all elements of hx [history we]re obtained from Air Care," as Bronson representatives were unable to communicate with him.[23] EMS reported that "given the patient's altered mental status the decision was made to intubate."[24] Bronson was "[u]nable to assess [Esquivel's psychiatric state] given intubation."[25] Under these circumstances, Bronson's registration personnel

The accident occurred at 3:10 a.m. on Friday, July 6, 2013.[26] Esquivel presented at Bronson via air care shortly afterward. As the medical records also report, Esquivel was able to be discharged later that day, at 3:40 p.m., because his injuries proved ultimately not serious.[27] Bronson's physicians retain the discretion to discharge a patient when, in their judgment, that patient is capable of being discharged, and there is no basis to withhold discharge. Because of the short turn-around and because of the state of his arrival, Bronson's registration personnel did not have the opportunity to interview Esquivel regarding insurance information before his discharge.

Under the circumstances, Bronson took various steps post-discharge to contact Esquivel and identify insurance, but was unable to do so. On September 10, 2012, Bronson, through

[21] 4/26/13 Br., Tab 1, Police Report p. 3.

[22] 4/26/13 Br., Tab 1, FAFD Report, Narrative p. 2 (Other).

[23] 4/26/13 Br., Tab 2, Medical Records p. 9.

[24] *Id.* The MACP states that "any difficulties in initially communicating with Mr. Esquivel appear to be related more to his intoxicated state, rather than his injuries." (App. p. 4.) This assertion is not only unsupported, but is just wrong, given the decision to intubate Esquivel.

[25] *Id.*, p. 11.

[26] 4/26/13 Br., Tab 1, Police Report p. 1.

[27] 4/26/13 Br., Tab 2, Medical Records p 16.

counsel, submitted a Freedom of Information Act Request to the Michigan Department of State Police. Through that, Bronson received the police report from the motor vehicle accident.[28] The police report showed that the vehicle was registered to Esquivel, but the report contained no insurance information. On October 17, 2012, Bronson, through counsel, mailed a letter to Esquivel at his last known address, in an effort to communicate with him regarding possible insurance coverage.[29] The letter was returned unopened and marked "unable to forward."[30]

C. Because it was unable to identify any applicable insurance, Bronson submitted an application for benefits to the MACP. The MACP refused to assign Bronson's claim.

Having been unable to reach Esquivel, on October 24, 2012, Bronson submitted an Application for Bodily Injury Benefits to the MACP. Along with the application, Bronson submitted the Michigan State Police Original Incident Report, license plate and vehicle information from the Secretary of State, Bronson's UB-04 billing form and itemized statement, and the medical records relating to Bronson's care and treatment of Esquivel.[31] In response to the question on the application that asks "On the date of the accident, did you have motor vehicle insurance," Bronson indicated "unknown."[32] By letter dated October 30, 2012 (i.e., one week after Bronson mailed its application), the MACP denied Bronson's application on the grounds that "[t]he owner or co-owner of an **uninsured** motor vehicle or motorcycle involved in an accident is not eligible for benefits."[33]

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[28] A copy of Bronson's request is attached at Tab 4 to 4/26/13 Br.

[29] A copy of Bronson's letter is attached at Tab 5 to 4/26/13 Br.

[30] A copy of the return envelope is attached at Tab 6 to 4/26/13 Br.

[31] A copy of Bronson's application and all documents submitted with it is attached at Tab 7 to 4/26/13 Br. This documentation was also attached to the Complaint as Exhibit A.

[32] *Id.*

[33] Emphasis added. A copy of the MACP's denial letter is attached at Tab 8 to 4/26/13 Br. A copy was also attached to the Complaint as Exhibit B.

Bronson did not stop in its efforts to locate Esquivel after submitting the application. Through counsel, Bronson subsequently ran an Accurint report in an effort to locate a current address and/or telephone number for Esquivel.[34] On November 6, 2012, Bronson, through counsel, then attempted to call Esquivel at the number listed in the Accurint report, but the number had been disconnected.[35] Bronson also sent another letter to Esquivel at the most recent address revealed on the Accurint report.[36] This letter was not returned unopened as had the prior letter, but Esquivel never responded to it.[37]

D. Current litigation: The circuit court erroneously grants the MACP summary disposition and compounds the error by granting the MACP attorneys' fees and costs.

On November 16, 2012, Bronson filed its Complaint in this matter, seeking a declaratory ruling and a writ of mandamus directing the MACP to assign Bronson's claim to a responsible no-fault carrier.[38]

In response, the MACP moved for summary disposition.[39] The MACP took the position that it was not obligated to assign the claim because Esquivel was either (1) uninsured, in which case he would be excluded from receiving no-fault benefits as an uninsured owner under MCL 500.3113(b), or (2) insured, in which case his own insurance carrier, not an MACP-assigned carrier, would be responsible for paying the bill.

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[34] A copy of the report is attached at Tab 9 to 4/26/13 Br.

[35] *Id.*

[36] A copy of Bronson's second letter is attached at Tab 10 to 4/26/13 Br.

[37] Bronson flatly denies the MACP's assertion in its brief before the circuit court that Bronson "conducted no investigation into insurance coverage." 4/1/13 MACP Brief Supporting Motion for Summary Disposition ("4/1/13 MACP Br") p. 5.

[38] Bronson originally sued the MACF. The MACP was substituted as a party-defendant by the circuit court. 5/6/13 Hearing Transcript ("Tr I") p. 21.

[39] 4/1/13 MACP Br.

On April 26, 2013, Bronson responded in opposition to the MACP's motion. Bronson argued that the plain language of the assigned claims statutes required the MACP to assign Bronson's claim to a responsible no fault carrier. Specifically, because Bronson had been unable to "identify" any applicable insurance, and the claim was not "obviously ineligible," the MACP was statutorily required to assign the claim.[40]

The circuit court heard argument on the MACP's motion on May 6, 2013. At the conclusion of the hearing, the court granted summary disposition to the MACP. In doing so, the Court analyzed the various statutory provisions in the assigned claims statutes and concluded that Bronson was not eligible to submit its claim to the MACP.[41] The circuit court entered its order granting the MACP's motion on July 15, 2013.[42]

On July 1, 2013, the MACP moved to recover its attorneys' fees under MCL 600.2591. The MACP argued that Bronson's claim was devoid of any arguable legal merit.[43] Bronson responded in opposition to the MACP's motion, arguing that the plain language of the assigned claims statute had supported its position and no case law had contradicted it.[44]

At a hearing on July 15, 2013, the circuit court granted the MACP's motion, reasoning:

> In this case, the issue that was resolved with the motion for summary disposition back in May—This wasn't even a close call on this case. This—If there is a frivolous action with regard to Assigned Claims Plan or the Assigned Claims Facility, this is it. There just was nothing that I could see that the plaintiff could hang its hat on here, and it was on a fishing expedition, and it was done so at their own peril.[45]

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[40] 4/26/13 Br.

[41] Tr I pp. 25-27.

[42] 7/15/13 Order and Judgment. The parties initially disputed the form of the order so entry of it was delayed.

[43] 7/1/13 MACP Motion for Attorneys' Fees and Costs.

[44] 7/11/13 Bronson Brief IOT Motion for Attorneys' Fees and Costs.

[45] 7/15/2013 Hearing Transcript ("Tr II") p. 13.

The court entered an order that day awarding the MACP its attorneys' fees.[46]

On August 2, 2013, Bronson timely moved for reconsideration.[47] The circuit court denied Bronson's motion by order entered on August 5, 2013.[48]

E. **Current litigation: The Court of Appeals corrects the circuit court's error.**

Bronson timely filed these appeals as of right on August 23, 2013.

In a February 19, 2015 unpublished opinion, the Court of Appeals reversed the circuit court. It concluded that Bronson's application fell "squarely within that portion of MCL 500.3172(1) addressing claims for which 'no personal protection insurance applicable to the injury can be identified.'"[49] Based on this, the Court concluded that the circuit court's decision was "premature" because it was entered before any discovery had taken place as to whether or not Esquivel's vehicle truly was uninsured.[50]

The MACP now seeks leave to appeal the Court of Appeals' decision.

LAW & ARGUMENT

I. THE COURT OF APPEALS CORRECTLY HELD THAT THE MACP'S SUMMARY DISPOSITION MOTION DID NOT FACTUALLY SUPPORT THAT IMMEDIATE DISMISSAL BY THE CIRCUIT COURT WAS WARRANTED WHEN THE MACP PRESENTED NO EVIDENCE THAT THE VEHICLE INVOLVED IN THE UNDERLYING ACCIDENT WAS UNINSURED.

A. **Standard of Review**

The grant or denial of summary disposition is reviewed de novo.[51]

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[46] 7/15/2013 Order for Attorneys' Fees.

[47] 8/2/2013 Motion for Reconsideration.

[48] 8/5/2013 Order Denying Reconsideration.

[49] Op. at 8.

[50] Op. at 7.

[51] *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

Questions of statutory interpretation are also reviewed de novo.[52] Statutory construction begins with the language of the statute because the words provide the most reliable evidence of intent.[53] "If the language of the statute is unambiguous, the Legislature must have intended the meaning clearly expressed . . . ," and "[n]o further judicial construction is required or permitted."[54] "Nothing will be read into a clear statute that is not within the manifest intention of the Legislature, as derived from the language of the statute itself . . . ."[55] "Because the goal of the judiciary is to interpret rather than write the law, courts lack authority to venture beyond a statute's unambiguous text."[56]

B. The MACP was statutorily required to assign Bronson's claim. The circuit court erred in granting the MACP summary disposition.

1. The assigned claims procedures.

Under Michigan's no-fault act, personal protection insurance benefits are payable, without regard to fault, for "accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle."[57] This is the "threshold" requirement for any claim for no-fault benefits – "accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle."[58] Personal protection insurance benefits include reasonably necessary medical care and treatment.[59] A medical

[52] *Echelon Homes, LLC v Carter Lumber Co*, 472 Mich 192, 196; 694 NW2d 544 (2005).

[53] *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999) (citation omitted).

[54] *Id*.

[55] *King v Reed*, 278 Mich App 504, 513; 751 NW2d 525 (2008).

[56] *Griffith v State Farm Mut Auto Ins Co*, 472 Mich 521, 526; 697 NW2dd 895 (2005).

[57] MCL 500.3105(1).

[58] *Wills v State Farm Ins*, 178 Mich App 263, 265; 443 NW2d 396 (1989).

[59] MCL 500.3107(1)(a).

provider, like Bronson, is a proper "claimant" under the no-fault act and may directly pursue payment of its charges from auto carriers and, where applicable, through the MACP.[60]

MCL 500.3172(1) sets forth the four circumstances under which a claimant – such as Bronson – may seek benefits through the assigned claims plan.[61] The statute reads, in pertinent part, as follows:

> A person entitled to claim because of accidental bodily injury arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle in this state may obtain personal protection insurance benefits through the assigned claims plan if no personal protection insurance is applicable to the injury, **no personal protection insurance applicable to the injury can be identified**, the personal protection insurance applicable to the injury cannot be ascertained because of a dispute between 2 or more automobile insurers concerning their obligation to provide coverage or the equitable distribution of the loss, or the only identifiable personal protection insurance applicable to the injury is, because of financial inability of 1 or more insurers to fulfill their obligations, inadequate to provide benefits up to the maximum prescribed.[62]

Thus, to trigger eligibility for assigned claim benefits, the claimant must meet at least one of four statutory conditions: (1) no PIP insurance is applicable to the individual's injury; (2) no PIP insurance can be identified; (3) two or more insurers are disputing their obligations to provide coverage; or (4) the insurer responsible for the loss is insolvent.

To apply for benefits under the assigned claims plan, the claimant must notify the MACP of the claim within the same one-year time frame as is allowed for the filing of a claim against an

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[60] *Lakeland Neurocare Centers v State Farm Mut Auto Ins Co*, 250 Mich App 35, 36 n.1 and 41; 645 NW2d 59 (2002) (holding that medical providers are claimants and may directly pursue benefits from insurers, including penalty interest and attorney fees, and so holding in the context of an MACP-assigned insurer).

[61] See *Spencer v Citizens Ins Co*, 239 Mich App 291, 301; 608 NW2d 113 (2000); *Spectrum Health v Grahl*, 270 Mich App 248, 251-52; 715 NW2d 357 (2006).

[62] MCL 500.3172(1) (emphasis added).

identified, responsible carrier.[63] The administrative rules promulgated by the Secretary of State for filing a claim with the MACP provide that the claim "shall be made on a form prescribed by the secretary of state" and that the claim "shall be completed in full, signed by the claimant, and submitted to the [MACP]."[64] Administrative Rule 11.107 states as follows:

> (1) A claim shall be accompanied by documentation of loss, if available, and the amount of loss sustained. Documentation of loss, if available at the time of application, shall include all of the following:
>
> (a) A copy of the police report of the accident.
>
> (b) A medical examination report.
>
> (c) Medical bills.
>
> (d) Work loss verification.
>
> (e) Additional information as required by the assigned claims facility or servicing insurer.
>
> ***
>
> (3) A medical bill shall contain an itemized list of the services rendered and the dates of the services and charges or the medication supplied and the dates supplied and charges. The bill shall contain identifying information of the person or organization furnishing the services or medication.

Under MCL 500.3173a, upon receipt of the claim, the MACP:

> shall make an initial determination of the claimant's eligibility for benefits under the assigned claims plan and shall deny an **obviously ineligible** claim. The claimant shall be notified promptly in writing of the denial and the reasons for the denial.[65]

[63] MCL 500.3174 ("A person claiming through the assigned claims plan shall notify the [MACP] of his claim within the time that would have been allowed for filing an action for personal protection insurance benefits if identifiable coverage applicable to the claim had been in effect."); see also Mich Admin Code, R 11.106(1) ("A claim for personal protection insurance benefits due under the assigned claims plan shall be filed with the assigned claims facility not more than 1 year after the accident.").

[64] Mich Admin Code, R 11.106(2) and (3).

[65] MCL 500.3173a (emphasis added); see also Mich Admin Code, R 11.108.

Thus, unless the claimant is "obviously ineligible" for benefits, the MACP is required to assign the claim to a servicing insurer.[66]

The servicing insurer must then promptly investigate the claim and either deny it or make payment within the time period described in the act. Specifically, Administrative Rules 11.103 and 11.109 state as follows:

> A servicing insurer to whom a claim has been assigned shall either deny the claim as being ineligible for benefits under the assigned claims plan or make prompt payment of loss or other lawful disposition of the claim in accordance with the act.
>
> ***
>
> Upon assignment of a claim from the assigned claims facility, the servicing insurer shall investigate the claim expeditiously and make prompt payment for loss within the time prescribed by the act.

A servicing insurer who makes such payment "is thereupon entitled to reimbursement" from the MACP or a higher priority insurer and, in fact, must preserve and enforce the MACP's indemnity and reimbursement rights as against third parties, including higher priority insurers.[67]

2. **Bronson complied with the assigned claims procedures and was eligible to seek benefits because no personal protection insurance applicable to the injury could be identified.**

Bronson complied with the procedures set forth above. Bronson submitted an Application for Bodily Injury Benefits on the form approved by the Secretary of State and included with its application the Michigan State Police Original Incident Report, license plate and vehicle information from the Secretary of State, Bronson's medical bills (UB-04 billing form

[66] The term "servicing insurer" is defined in the regulations as "the insurer or self-insurer assigned to service a claim under the assigned claims plan." Mich Admin Code, R. 11.101. Servicing insurers are drawn from a pool of insurance companies that provide no-fault insurance in Michigan. MCL 500.3171, 3175; Mich Admin Code, R 11.108. The MACP assigns claims to servicing insurance companies based upon the volume of insurance the company writes in Michigan, the resources of the company relative to the claim, and the convenience of the claimant. MCL 500.3171, 3175; Mich Admin. Code, R 11.108.

[67] MCL 500.3172, 3175(1) and (2); Mich Admin Code, R 11.109.

and itemized statement), and the medical records relating to Esquivel's treatment.[68] Thus, Bronson's application met the requirements of Administrative Rules 11.106 and 11.107.

Bronson also met one of the four statutory "triggers" to seek no-fault benefits through the assigned claims plan as set forth in MCL 500.3172(1).[69] The language of that statute is plain and unambiguous:

> **A person entitled to claim because of accidental bodily injury arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle in this state** may obtain personal protection insurance benefits through an assigned claims plan **if . . . no personal protection insurance applicable to the injury can be identified** . . . .[70]

Bronson met these requirements because it treated Esquivel for "accidental bodily injury arising out of the . . . use of a motor vehicle as a motor vehicle," which is the threshold for no-fault coverage in the first instance, and because "no personal protection insurance applicable to the injury [could] be identified." This statutory language is clear and must be applied as written.

This is consistent with other decisions on the point. In *Spectrum Health v Grahl*, the Court of Appeals stated:

> Titan was assigned Grahl's claim because, at the time of the assignment, both Grahl and the Assigned Claims Facility were unable to identify any other source of personal protection insurance available to cover Grahl's medical expenses. These are the first and second situations identified in the statute. Only when Titan began investigating the claim did it discover that Grahl had personal protection insurance through her estranged husband's policy with Farmers.[71]

As in this case, Bronson was qualified to apply for benefits under MCL 500.3172(1) because it was unable to identify any other source of personal protection insurance benefits.

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[68] See documents attached at Tab 7 to 4/26/13 Br.

[69] MCL 500.3172(1).

[70] *Id.* (emphasis added).

[71] *Spectrum Health*, *supra* at 252.

3. The MACP's position is not supported by the plain language of the assigned claims statutes or interpreting case law because Bronson's claim was not "obviously ineligible."

Before the circuit court and the Court of Appeals, the MACP took the position that Esquivel was either (1) uninsured, in which case he would be excluded from receiving no-fault benefits as an uninsured owner under MCL 500.3113(b), or (2) insured, in which case his own insurance carrier, not a MACP-assigned carrier, would be responsible for paying the bill. Therefore, argued the MACP, Bronson's claim was "obviously ineligible" under MCL 500.3173a. The MACP was wrong and the circuit court was led down the primrose path by the MACP's erroneous reasoning.

MCL 500.3113 sets forth various exclusions from coverage under the no fault act. These exclusions are incorporated into assigned claims cases by MCL 500.3173.[72] One of the exclusions under .3113 is subsection (b), which directs that an individual is excluded from benefits if the vehicle involved in the accident was that person's own uninsured vehicle.[73] In this regard, the MACP correctly argued in its first prong that, if Esquivel's vehicle was in fact uninsured at the time of the accident, Bronson's claim would be excluded under MCL 500.3173.

It is the second prong of the MACP's analysis that does not withstand scrutiny, however. Even though Esquivel's vehicle may have been insured at the time of the accident, Bronson was unable to identify that insurer through its investigation. It is true, as the MACP argued, that Esquivel's insurer may – at some point in the future – be ultimately held responsible. But that

[72] MCL 500.3173 states: "A person who because of a limitation or exclusion in sections 3105 to 3116 is disqualified from receiving personal protection insurance benefits under a policy otherwise applying to his accidental bodily injury is also disqualified from receiving benefits under the assigned claims plan."

[73] The circuit court apparently mistakenly concluded that merely owning the involved vehicle excludes an individual under .3113(b). See Tr I p 25 ("As stated earlier, 500.3113 prohibits a person from being paid personal protection insurance benefits for accidental bodily injury if, at the time of the accident, the person was the owner of a motor vehicle involved in the accident."). In fact, the individual must both own the vehicle **and** that vehicle must **be uninsured** for the individual to be excluded. MCL 500.3113(b). The circuit court apparently misunderstood this. See Section II, *infra*.

does not mean that Bronson was ineligible to seek benefits through the Assigned Claims Plan in the interim. This is for two reasons: the plain language of MCL 500.3172(1) and prior published authority, both of which indicate squarely to the contrary.

MCL 500.3172(1), for starters, distinguishes between insurance that is "applicable" to a particular injury and insurance that may be applicable but cannot be "identified." This is a significant distinction. The MACP argued, and the circuit court erroneously agreed, that if Esquivel's vehicle was insured, then only that insurer is responsible. But that is not correct. In directing that a person may seek assigned claims benefits either where no insurance "is applicable" **or** where no insurance "can be identified," MCL 500.3172(1) unambiguously assumes that in the latter case insurance may be available. It just cannot "be identified." The MACP's analysis, which the circuit court bought, ignores this crucial statutory distinction.

The Court of Appeals corrected the circuit court's erroneous interpretation. It reasoned:

> The MACP correctly states that an injured party "who because of a limitation or exclusion in [MCL 500.3105 to MCL 500.3116] is disqualified from receiving [PIP] benefits" from an assigned insurer through the MACP. MCL 500.3173. And MCL 500.3113(b) provides that "[a] person is not entitled to be paid [PIP] benefits" if he or she is "the owner or registrant of a motor vehicle . . . involved in the accident" and did not maintain statutorily required no-fault insurance at the time of the accident. The MACP also correctly posits that if Esquivel or a family member in his household maintained no-fault insurance at the time of the accident, that insurer would take priority under MCL 500.3114(1).
>
> It is not clear on this undeveloped record, however, that one of these scenarios exist. Esquivel's insurance status remains unknown. When he is deposed, the material fact missing from the no-fault equation will emerge. MACP has not yet carried its burden as the moving party to demonstrate with admissible evidence, rather than speculation, that Bronson was "obviously ineligible" to make a claim for benefits.[74]

[74] Op. pp. 7-8.

The MACP's analysis also runs afoul of prior published authority of the Court of Appeals. In *Spencer v Citizens Insurance Company*, the victim of a hit-and-run accident was unable to identify the owner-driver of the vehicle that hit him. This Court explained that that victim "qualified to receive benefits from the Assigned Claims Facility because no personal protection insurance applicable to plaintiff's injury could be ascertained."[75] Subsequently, the assigned claims carrier ceased paying benefits when it identified the insurer of the hit-and-run vehicle. In holding that the assigned carrier could not unilaterally terminate benefits under these facts, the Court of Appeals reasoned:

> an assigned-claim insurer that subsequently ascertains a higher priority insurer cannot thereafter simply refuse to pay the assigned-claim insured party further benefits. First, absolutely no language in the assigned-claims provisions of the no-fault act specifically relieves an insurer to whom the Assigned Claims Facility has assigned a claim of its obligation to pay benefits on the basis that the assigned insurer later discovers another applicable insurer….
>
> Second, we observe that statutory language provides a different recourse, other than unilaterally terminating the assigned-claim insured's receipt of benefits, to an assigned-claim insurer that later discovers a higher priority insurer. Subsection 3175(1), MCL 500.3175(1); MSA 24.13175(1), explains that "[a]n insurer to whom claims have been assigned shall make prompt payment of loss in accordance with this act and is thereupon entitled to reimbursement by the assigned claims facility for the payments and the established loss adjustment cost." Section 3175 further provides …
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> * * *
>
> that the assigned-claim insurer must promptly reimburse the assigned-claim insured for any losses, while providing for the assigned-claim insurer the right and the duty to seek reimbursement from and enter settlements with any appropriate third parties, which category would include subsequently identified higher priority insurers.[76]

[75] *Spencer, supra* at 302.

[76] *Id.* at 305-308.

Under the reasoning of *Spencer*, therefore, the potential existence of no-fault coverage through another source **does not** disqualify a claimant from seeking and obtaining benefits from the MACP. To the contrary, the claimant is still entitled to seek benefits from the MACP where, under MCL 500.3172(1), that insurance carrier cannot be identified. The assigned claims carrier may subsequently determine that another carrier is responsible. But as *Spencer* holds, the proper remedy is **not** to disqualify the claimant from further benefits. Rather, the proper remedy is for the assigned claims carrier to continue paying benefits and seek reimbursement from the higher-priority carrier. The MACP's conclusion – that Bronson was ineligible to receive benefits from the Assigned Claims Plan because of the potential existence of higher priority coverage – was therefore simply wrong under *Spencer*.

Under these circumstances, the MACP was wrong to conclude that Bronson's claim was "obviously ineligible" for assignment under MCL 500.3173.

4. **The MACP's position reads words into the no fault act, contrary to a cardinal rule of statutory interpretation.**

It is a cardinal principle of interpretation that "[n]othing will be read into a clear statute that is not within the manifest intention of the Legislature, as derived from the language of the statute itself . . . ."[77] The MACP's argument, which the circuit court adopted, ignores this fundamental principle.

The MACP does not dispute that, under MCL 500.3172(1), there are circumstances in which a claimant may recover benefits because no applicable insurance can be identified.[78] What the MACP is in effect arguing is that a vehicle *owner* (or a medical provider who treated that owner) injured in an accident while an occupant of his own car can never seek benefits

[77] *King*, *supra* at 513.

[78] Tr I p. 7.

through the MACP on the ground that no applicable insurance can be identified. But nothing in the act prohibits vehicle owners – or, as here, a medical provider – from seeking benefits through the MACP in this scenario. By holding otherwise, the circuit court effectively read into the no-fault act a limitation that has absolutely no textual basis: that hospitals, although proper claimants, may receive benefits under MCL 500.3172(1) on the ground that "no applicable insurance can be identified *only where the individual injured did not own the vehicle involved in the accident*." These words, verbatim or in substance, are found nowhere in the no-fault act. The circuit court's decision to effectively graft this requirement onto the act was erroneous and unsupported. If such a limitation is to be added into the assigned claims provisions, it is for the Legislature to do so, not the courts.[79]

Moreover, it is important to remember that Esquivel is not the claimant here. Bronson is. It is well-settled that medical providers, like Bronson, are proper claimants under the no-fault act.[80] And, unlike the owners themselves, it *is* possible for a hospital to be unable to identify insurance in this scenario. It is a frequent scenario that a hospital is unable to communicate with a patient to identify insurance following treatment. Nothing in the act prevented Bronson from seeking benefits under this scenario. The MACP's analysis assumes that Bronson's claim is co-extensive with Esquivel's claim. That is not supported by the plain language of the statute, though. Section .3173a required the MACP to make "an initial determination of the **claimant's eligibility** for benefits under the assigned claims plan."[81] Bronson, not Esquivel, was the claimant here. It is Bronson, and not Esquivel, as "claimant" that must be evaluated for obvious ineligibility under § 3173a.

[79] *Lakeland, supra* at 40.

[80] *Id.* at 64.

[81] MCL 500.3173a (emphasis added).

5. The MACP is not required to act as "some sort of detective agency."

Relying on § 3173a, the MACP correctly notes that is it required to make an "initial determination" of eligibility for benefits and "deny an obviously ineligible claim." It then continues:

> There is no statutory basis for the Court to conclude that the Legislature intended to make the MACP some sort of detective agency, charged with hunting for possible sources of insurance when the claimant has not presented a case in which benefits would ever be payable.[82]

That is absolutely accurate. It is also a red herring. The MACP is not tasked with investigating claims for assignment and Bronson has not taken the position that it is. For that matter, the MACP points to no evidence that it actually does investigate claims. Nothing in the no fault act requires the MACP to do so. Rather, its task is to review claims that are submitted for obvious ineligibility, reject those that are, and assign those that are not to a servicing insurer.[83] It is then the servicing insurer's responsibility to investigate the claims and make determinations in accordance with the no fault act.[84] The MACP overstates its alleged investigatory role.[85] Bronson's claim could only be denied by the MACP if it was "obviously ineligible." That is, the MACP could only deny the claim if it was "evident," "open to view," or "easily seen"[86] that the claim was not eligible for assignment.[87] That is not the case here. Because the MACP relied on § 3113(b) to deny the assignment, it could only do so if it was "evident" and "open to view" and "easily seen" that Esquivel's vehicle was uninsured. The MACP admits that it does not know whether the vehicle was uninsured. Its refusal to assign the claim

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[82] App. p. 12.

[83] MCL 500.3173a; MCL 500.3174.

[84] MCL 500.3175(1) ("An insurer to whom claims have been assigned shall make prompt payment of loss in accordance with this act."); MCL 500.3175(2) ("The insurer to whom claims have been assigned shall preserve and enforce rights to indemnity or reimbursement against third parties ….").

[85] Since the automobile insurance industry assumed the responsibility of administering the MACP, the MACP has undertaken to refuse assignment of claims as a routine matter, thereby routinely necessitating litigation to force the assignment.

[86] http://dictionary.reference.com/browse/obvious

[87] *Cairns v East Lansing*, 275 Mich App 102, 107; 738 NW2d 246 (2007) ("If a statute does not define a word, a court may consult dictionary definitions to ascertain the plain and ordinary meaning to be given to the word.").

under these facts was wrongful. The MACP's sole, ministerial task in processing claims for assignment is to reject those for which it is "evident" that they are not proper claims, not to act as some sort of "insurance detective."

6. The MACP's analysis of .3172(1) does not withstand scrutiny.

The MACP argues that the "Legislature's use of the word 'entitled'" in the first sentence of MCL 500.3172(1) supports its position that one looks first to MCL 500.3173 to determine whether an exclusion to coverage applies before analyzing whether one of the four triggers in .3172(1) applies.[88] This argument is triply-flawed.

First, for the MACP's argument to work, it would have to just stop reading at the word "entitled." That is not what the statute provides, though. The provision reads:

> A person entitled to claim **because of** accidental bodily injury arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle in this state may obtain personal protection insurance benefits through the assigned claims plan if ….[89]

The "because of" language and the words that succeed it qualify what the Legislature meant when it said, "entitled to claim." That is, a person, like Bronson, "entitled to claim *because of accidental bodily injury arising*" from a motor vehicle accident "may obtain" benefits through the MACP "if" one of the four above scenarios applies.[90] "Entitled to claim" does not refer to any exclusion under § 3113(b). It refers to the fact of the underlying motor vehicle accident and injury.

Second, the MACP's argument renders § 3173 nugatory. The MACP tries to shoehorn the exclusion under § 3113(b) into the word "entitled" in § 3172(1), i.e., one is not "entitled" to claim under § 3172(1) if an exclusion under § 3113 applies. But were that correct, there would be no need for

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[88] MACP Br. pp. 7-8.

[89] MCL 500.3172(1) (emphasis added).

[90] See *Koontz v Ameritech Svcs, Inc*, 466 Mich 304, 318; 645 NW2d 34 (2002) (recognizing "that a word or phrase is given meaning by its context or setting").

§ 3173, which expressly incorporates the "limitation[s] or exclusion[s] in sections 3105 to 3116," including § 3113(b), into assigned claims cases. It is axiomatic that one provision of a statute cannot be read nugatory by the interpretation of another.[91] The MACP's argument violates this rule.

Finally, as the Court of Appeals correctly noted, the MACP has not made its case to rely on this exclusion as a basis to refuse assignment of Bronson's claim. In one breath, the MACP is forced to concede that it has yet to be determined whether Esquivel's vehicle was uninsured at the time of the accident.[92] Yet in the next, the MACP states that Bronson is not "entitled to" claim through the MACP under § 3172(1) because that language incorporates the exclusion under .3113(b), which bars "uninsured" owners from benefits.[93] The MACP's argument glosses over the fact that whether Esquivel's vehicle was "uninsured" has not yet been determined. The MACP's entire basis to exclude Bronson's claim under § 3172(1) is to assume that the vehicle was uninsured.[94] That assumption, however, is not sufficient to deny assignment of Bronson's claim. Under § 3173a(1), Bronson's claim is not "obviously ineligible" because it is not evident that Esquivel's vehicle was uninsured. The claim should have been assigned and the assigned-carrier left to make that determination. The Court of Appeals correctly recognized that the MACP had failed to meet its burden in this regard.

Because "no applicable insurance can be identified" and because Bronson's claim is not "obviously ineligible," the MACP was required to assign this claim. The circuit court erroneously granted summary disposition to the MACP. The Court of Appeals correctly reversed that decision. Its decision should not be disturbed on appeal.

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[91] *State Farm Fire & Cas Co v Old Republic Ins Co*, 466 Mich 142, 146; 644 NW2d 715 (2002).

[92] App. p. 11.

[93] *Id.* at 12.

[94] MACP denial letter refusing to assign Bronson's claim on the grounds that "[t]he owner or co-owner of an uninsured motor vehicle or motorcycle involved in an accident is not eligible for benefits." (See 4/26/13 Br, Tab 8.)

II. THE CIRCUIT COURT CLEARLY ERRED IN FINDING THAT BRONSON'S CLAIM WAS FRIVOLOUS BECAUSE THE PLAIN LANGUAGE OF THE ASSIGNED CLAIMS STATUTUES AUTHORIZED BRONSON TO SUBMIT ITS CLAIM AND REQUIRED THE ASSIGNED CLAIMS PLAN TO ASSIGN IT, AND THERE IS NO PUBLISHED AUTHORITY THAT CONTRADICTS BRONSON'S POSITION.

A. Standard of Review

"A trial court's finding that a claim is frivolous is reviewed for clear error."[95] "A decision is clearly erroneous when 'the reviewing court is left with a definite and firm conviction that a mistake has been made.'"[96]

B. The circuit court clearly erred in sanctioning Bronson because Bronson's position is supported by the plain language of the assigned claims statutes and no published authority contradicts Bronson's position.

As Bronson argued in Section I, *supra*, the circuit court erroneously adopted the MACP's reasoning and dismissed Bronson's claims. This was error enough. But the court then compounded the error by declaring that Bronson's claim was "frivolous" and warranted sanctions under MCL 600.2591. This decision cannot be upheld. Even if the MACP's reasoning were correct (which Bronson flatly disputes), there was nothing frivolous about Bronson's position. Indeed, in order to reach its decision, the circuit court engaged in a lengthy statutory analysis that required it to synthesize various statutes in the no fault act.[97] The Court of Appeals has since vindicated Bronson's position and reversed the circuit court. Given this fact, Bronson's position now cannot be held to have been "devoid of arguable legal merit" under these circumstances, particularly where a plain reading of the act contradicts the circuit court's analysis. The Court of Appeals decision to vacate the circuit court's decision in this regard should be upheld.

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[95] *Schroeder v Terra Energy, Limited*, 223 Mich App 176, 195; 565 NW2d 887 (1997).

[96] *Moore v Secura Ins*, 482 Mich 507, 516; 759 NW2d 833 (2008).

[97] Tr I pp. 25-27.

1. **Standard for finding a claim or defense frivolous.**

MCR 2.625(A)(2) provides that, "if the court finds on motion of a party that an action or defense was frivolous, costs shall be awarded as provided by MCL 600.2591." Correspondingly, MCL 600.2591 states:

> (1) Upon motion of any party, if a court finds that a civil action or defense to a civil action was frivolous, the court that conducts the civil action shall award to the prevailing party the costs and fees incurred by that party in connection with the civil action by assessing the costs and fees against the nonprevailing party and their attorney.
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> * * *
>
> (3) As used in this section:
>
> > (a) "Frivolous" means that at least 1 of the following conditions is met:
> >
> > * * *
> >
> > > (iii) The party's legal position was devoid of arguable legal merit.

2. **Bronson's position not only is not contradicted by published case law, it is supported by the plain language of the no fault act.**

In *Kitchen v Kitchen*,[98] this Court explained the proper analysis to be used in determining whether sanctions are appropriate under MCL 600.2591. The plaintiff's position in *Kitchen* had been that the defendant orally promised that the plaintiff's irrigation system could cross the defendant's land in perpetuity.[99] In other words, contrary to the statute of frauds, the plaintiff argued that a license to use land could become irrevocable based on an alleged oral promise alone.[100] When plaintiff tried to seek a dismissal without prejudice, the defendant opposed the motion, requesting dismissal *with* prejudice and asking that plaintiff be sanctioned for filing a

[98] 465 Mich 654, 661; 641 NW2d 245 (2002).

[99] *Id.* at 656-57.

[100] *Id.*

frivolous lawsuit.[101] The trial court granted summary disposition for defendants and imposed sanctions against plaintiff, finding that the complaint was frivolous. The Court of Appeals affirmed.[102] This Court, although affirming summary disposition in favor of defendants, reversed the Court of Appeals' decision to uphold sanctions.[103] The Court explained:

> The issue whether plaintiffs should be subject to sanctions is much closer than the Court of Appeals made it appear. Although plaintiffs' claim for an irrevocable license must ultimately fail, plaintiffs presented a sufficient argument grounded in law and fact to avoid a finding of frivolity. The mere fact that plaintiffs did not ultimately prevail does not render the supplemental complaint frivolous.
>
> While our decision today is based on the statute of frauds and our prior caselaw, it was not easily resolved. There has been no authority in Michigan that **clearly and unequivocally** addresses whether an oral license can become irrevocable by estoppel. We now firmly establish that it cannot.
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> * * *
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> Not every error in legal analysis constitutes a frivolous position. Moreover, merely because this Court concludes that a legal position asserted by a party should be rejected does not mean that the party was acting frivolously in advocating its position.[104]

Given this high standard for a finding of frivolity, this Court concluded that the circuit court had clearly erred and reversed the award of sanctions.[105]

Farmers Insurance Exchange v Kurzmann[106] is one example in which the Court of Appeals has affirmed sanctions under MCL 600.2591. Blaine Kurzmann was seriously injured in a motor vehicle while a passenger in a car operated by his brother and owned by his father.

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[101] *Id.*

[102] *Id*.

[103] *Id*. at 661.

[104] *Id.* at 662-663 (emphasis added).

[105] *Id.* at 663.

[106] 257 Mich App 412; 668 NW2d 199 (2003).

Both Blaine's brother and father were insured under a policy issued by Farmers. As a family member, Blaine was an "insured person" under the language of Farmers' policy. Farmers' denied coverage to Blaine on the basis of an exclusion which stated Farmers was not liable "for bodily injury to an insured person." Michigan had long declared such exclusions void as against public policy. But Farmers ignored case law contradicting its position and filed a declaratory action requesting that Blaine be excluded from coverage. The *Kurzmann* Court not only rejected Farmers "defense" to Blaine's claims but, in light of that defense contradicting clearly established, published case law, the Court deemed it "frivolous" and ordered Farmers to pay Blaine's costs and fees:

> Sanctions for bringing a frivolous action are warranted where the plaintiff, on the basis of a ruling in another case, has reason to believe that an action against the defendant lacks merit. See *Vermilya v Dunham*, 195 Mich App 79, 84; 489 NW2d 496 (1992). In this case, the argument presented by Farmers was **specifically addressed and rejected by this court** in *Parmelee, supra*. Furthermore, Farmers failed to cite any case law overruling, criticizing, or distinguishing *Parmelee*.[107]

This same analysis was applied in *Cvengros v Farm Bureau Insurance*, in which the Court of Appeals affirmed a trial court's award of attorneys' fees under MCL 600.2591 where the party's position was "devoid of arguable legal merit" when "**two published opinions**" of the Court of Appeals were "directly adverse to [the party's] position."[108]

Other published cases have discussed justifications for courts **not** deeming a claim or defense frivolous. They are equally instructive here. For example, in *Schroeder v Terra Energy, Limited*,[109] the Court denied a request for fees and reasoned:

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[107] *Id.* at 423 (emphasis added).

[108] 216 Mich App 261, 267-68; 548 NW2d 698 (1996) (emphasis added).

[109] *Schroeder, supra* at 195.

> Because the issue of post-production costs has **not been clearly decided in Michigan, and because there is a split of authority in other states**, the trial court, in our judgment, erred in its findings that plaintiff's claim was frivolous.[110]

In *Travelers Insurance v U-Haul of Michigan, Inc*,[111] this Court employed similar reasoning to reject finding a frivolous claim:

> The No-Fault Act and Owners Liability Act have co-existed for more than 25 years, yet there is no published authority stating that the No-Fault Act has precluded actions for property damage under the owners act. **Though a close question, given the unsettled state of the law, plaintiff's attempt to proceed under the owners act was not entirely unreasonable**. We therefore deny defendants their costs.

The parties in *Kurzmann* and *Cvengros* ignored published case law when asserting their positions, and their deliberate indifference to this case law, according to the Court of Appeals, warranted sanctions. That is not at all what occurred in this case. To the contrary, as Bronson argued in Section I, *supra*, the circuit court clearly erred in its statutory analysis. The Court of Appeals has since agreed with Bronson's position. Even if this Court holds that reversal is wrranted, sanctions are clearly inappropriate.

As set forth in detail above, Bronson's legal position *is* grounded in the plain language of the no-fault act. The MACP was required to assign this claim because (1) under MCL 500.3172(1), no applicable insurance could be identified; and (2) under MCL 500.3173 and 3173a, Esquivel was not "obviously ineligible" simply by virtue of the uninsured owner exclusion because the parties have been unable to determine whether, in fact, his vehicle was or was not insured. With Bronson's position being grounded in the plain language of the statute,

[110] *Id.* (emphasis added).

[111] 235 Mich App 273; 597 NW2d 235 (1999) (emphasis added).

there should have been no finding of frivolity.[112] If anything, this case is much more akin to *Kitchen*, *Schroeder* and *Travelers Insurance*, in which the law was unsettled.

For that matter, there is no published authority in Michigan that even touches upon let alone "clearly and unequivocally" holds that the MACP is not required to assign a claim under the circumstances presented here.[113] Given the lack of case law addressing the issue presented here and the fact that Bronson's position is consistent with the plain language of the act, the circuit court's finding was clearly erroneous.

At the hearing on the MACP's claim for attorney fees, the circuit court concluded that sanctions were proper because it "wasn't even a close call" and that Bronson was "on a fishing expedition."[114] It appears, however, that the court was under a mistaken impression about what the governing statutory language in MCL 500.3113(b) required when it decided that Bronson's claim "wasn't even a close call." At the hearing on the MACP's motion for summary disposition, the court reasoned that Bronson's claim was ineligible for assignment simply because Esquivel owned the vehicle at issue. The court explained:

> Pursuant to the statute, defendant denied plaintiff's claim because Esquivel **owned the motor vehicle involved in the accident**. Defendant's denial was based on reading MCL 500.3113 and 500.3173 together.
>
> As stated earlier, 500.3113 prohibits a person from being paid personal protection insurance benefits for accidental bodily injury if, at the time of the accident, **the person was the owner of a motor vehicle involved in the accident**.
>
> MCL 500.3173 provides that a person who is ineligible for personal protection insurance benefits because of a limitation or exclusion in other various statutes, including MCL 500.3113, is

[112] *Kitchen*, *supra* at 662.

[113] *Id*.

[114] Tr II p. 13.

> prohibited from receiving benefits under the Assigned Claims Plan.
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> Under these provisions, **because Esquivel owned the motor vehicle involved in the accident, neither personal protection insurance benefits nor benefits under the Assigned Claims Plan may be paid out for him. As such, plaintiff was obviously ineligible for benefits under the Assigned Claims Plan, and defendant correctly denied plaintiff's claims, I find**.[115]

Contrary to the court's reasoning, mere ownership is insufficient to exclude an individual from benefits. To the contrary, in order to be excluded from benefits, the individual must both own the vehicle and that vehicle **must be uninsured** for the individual to be excluded. As MCL 500.3113(b) states:

> A person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident any of the following circumstances existed:
>
> * * *
>
> (b) The person was the owner or registrant of a motor vehicle or motorcycle involved in the accident with respect to which **the security required by section 3101 or 3103 was not in effect**.

The circuit court apparently misunderstood this. It was this misunderstanding that apparently lead the court to hold that Bronson's claim "wasn't even a close call."

The MACP characterizes Bronson's claim as "an effort to force the MACP to conduct an investigation in the hope that insurance coverage would be discovered."[116] This is not supported. As explained above,[117] the MACP's role is not to investigate claims, but only to perform the ministerial task of denying those that are obviously ineligible. Bronson's claim in this case was not and the claim should have been assigned. The MACP states, without citation to any authority, that "[t]here was never

[115] Tr I pp. 25-26 (emphases added).

[116] App. p. 21.

[117] *Supra* pp. 21-22.

any possibility of obtaining benefits through the MACP in this case."[118] That is simply wrong, as the plain language of § 3172(1) and the Court of Appeals' decision in *Spencer* make clear.

Even if this Court ultimately disagrees with Bronson that the MACP was required to assign this claim, sanctions under MCL 600.2591 were inappropriate. Bronson's position is grounded in the plain language of the no-fault act and is not contradicted by published case law. It simply cannot be said that Bronson's position was devoid of arguable legal merit under MCL 600.2591, particularly now that the Court of Appeals has agreed with Bronson's position. The circuit court clearly erred on the point. The Court of Appeals' decision to reverse that holding should not be disturbed on appeal.

CONCLUSION

For these reasons, Bronson requests that this Court deny the Michigan Assigned Claims Plan's Application For Leave To Appeal Or, In The Alternative, For Peremptory Reversal.

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[118] App. p. 21.